IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1225 of 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.Dilip Bodake, for the Petitioner
Mr. R.M. Patne, A.G.P. for Respondent No.3.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.

DATED : 1st February, 2005

P.C.

. The petitioner by the present petition impugns the declaration dated 6th March, 1998 in so far as the petitioner's land bearing Gat No.125 admeasuring about 59 Ares situate at Shelkewadi, Taluka and District Satara. It is the case of the petitioner herein that there was partition between his brother and himself in R.C.S. No.321 of 1939. By virtue of that partition and as pleaded in paragraph 21 of the petition he was allotted 2 Hectors 50 Ares and the widow of his brother was allotted 0.93 Ares. It is his contention that what has to be considered was the holding on the cutoff date which is 2nd July, 1981.

. Reply has been filed on behalf of the Respondent by Govind Ganpat Joshi, Resettlement Officer, Satara. From the affidavit it is clear that the partition was not considered only as it was not pointed out at the time of notice under Section 4(1) was issued under the Land Acquisition Act. That really would not be correct if and at all what has to be considered are the objections filed at the time of Section 5(A) hearing. It is the case of the petitioner that he had filed the said document at the time of Section 5(A) hearing. If that be the case, the non-consideration of the vital document would affect the declaration under Section 6 in so far as the petitioner's land as set out in prayer clause (b)(i) of the petition.

2. On behalf of the petitioner learned Counsel also makes a statement that if the matter is remanded by setting aside the declaration to the extent of his land he would not raise any objection as to time for making declaration under Section 6 or for passing of an award. In the light of that the following order:-

(i) Rule made partly absolute in terms of

prayer clause (b)(ii) to the extent of the petitioner's land identified under Gat No.125 admeasuring 59 Are of village Shelkewadi, Taluka and Dist. Satara. It will be open to the respondents after hearing the petitioner and considering the effect of partition as set out in R.C.S. No.231 of 1939 to thereafter issued fresh declaration as the case may be.

(ii) Petition disposed accordingly. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)